

U.S. DEPARTMENT OF LABOR

**SECRETARY OF LABOR
WASHINGTON, D.C.**

DATE: August 2, 1989

CASE NO. 84-ERA-5

IN THE MATTER OF

SHERRILL J. NOLDER,
COMPLAINANT,

v.

RAYMOND KAISER ENGINEERS, INC.,
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

ORDER FOR FURTHER SUBMISSION

In response to my March 15, 1989, Order to Submit Settlement Agreement, Complainant has submitted a document entitled "Release," which document is signed by Complainant individually. This Release, *inter alia*, acknowledges Complainant's receipt of a sum of money from Respondent in full satisfaction of all claims Complainant has against Respondent and certain other named persons, including his claim in the case before me. The Release does not set forth the amount of money received by Complainant. Counsel for Complainant advises that, in view of the specific confidentiality provision of the Release, Respondent's permission must be obtained in order for Complainant to furnish me with that amount. Complainant's counsel also notes that Complainant feels that the settlement terms, including the monetary amount received, are fair, adequate and reasonable.

Although the terms of a settlement agreement need not be set out in an order approving a settlement, as was stated in my previous order, "[w]ithout examination of the specific terms of settlement, I cannot determine whether the settlement is fair, adequate and reasonable." Order to Submit Settlement Agreement at 1. To make this determination, it is necessary to balance the strength of the Complainant's case on the merits against the

settlement terms. Van Horn v. Trickey, 840 F.2d 604, 607 (8th Cir. 1988); Parker v. Mitchell, 667 F.2d 1204, 1209 (5th Cir. 1982); Armstrong v. Board of Sch. Directors, Etc., 616 F.2d 305, 332 (7th Cir. 1980). The amount of money offered to Complainant is a settlement term which is integral to this process. As pointed out in Holden v. Burlington Northern, Inc., 665 F. Supp. 1398, 1407 (D. Minn. 1987), "in determining whether the proposed settlement is fair, reasonable, and adequate, by far the most important factor for the Court to consider is the strength of the plaintiff's case balanced against the amount offered in settlement.. Grunin v. International House of Pancakes, 513 F.2d 114, 124 (8th Cir. 1975), cert. denied, 423 U.S. 864 (1975). Accordingly, the parties are directed to furnish within twenty (20) days of receipt of this order, the specific amount of money received by Complainant in exchange for execution of the Release.

Furthermore, since the Release is signed only by Complainant individually, the Respondent is directed to submit a certification demonstrating its informed consent to the agreement.

SO ORDERED.

ELIZABETH DOLE
Secretary of Labor

Washington, D.C.